

**United States Bankruptcy Court  
Eastern District of Virginia  
Alexandria Division**

**In re:**

**Linda M. and Michael J. Armellino,**

**Case No. 20-12475-BFK**

**Debtor.**

**Chapter 11**

**Motion to Dismiss or Convert Case to Chapter 7**

Comes Now, John P. Fitzgerald, III, Acting United States Trustee for Region 4, and moves the Court to dismiss or convert this case to a case under chapter 7, whichever is in the best interests of the creditors and the estate, and to shorten the notice period for a hearing on this matter.

In support of this motion the following representations are made:

1. The Court has authority to hear and decide this matter. 28 U.S.C. Section 1334.
2. This is a core matter. 28 U.S.C. Section 157(b)(2)(A).
3. On November 6, 2020, Linda M. Armellino filed a petition for relief under chapter 11 of the Bankruptcy Code.
4. On November 23, 2020, Michael J. Armellino filed a petition for relief under chapter 11 of the Bankruptcy Code, case number 20-12579-BFK.
5. On February 18, 2021, the two cases were substantively consolidated.
6. On January 27, 2022, the Debtor filed a Report of Sale for real estate located at 409 Old Town Court, Alexandria, VA. Docket No. 134.
7. The amount due to the seller was \$710,019.52. Docket No. 134-1.

Office of United States Trustee  
1725 Duke Street, Suite 650  
Alexandria, VA 22314  
John P. Fitzgerald, III  
Acting United States Trustee  
For Region 4  
Jack Frankel, Attorney, VSB # 15019  
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8. The last monthly operating report filed was for November 2021. Two separate reports were filed even though the cases have been substantively consolidated.<sup>1</sup> Docket Nos. 129 and 130.
9. Monthly reports are past due for December 2021 and January 2022. The February 2022 report is due March 20, 2022.
10. The Debtor owes United States Trustee fees for the 4<sup>th</sup> quarter of 2021. The fee was due January 31, 2022.

### Argument

The Court, for cause, after notice and hearing, may dismiss or convert a case to a case under chapter 7, whichever is in the best interests of the creditors and the estate. 11 U.S.C. § 1112(b)(1).

Cause exists to grant the requested relief:

- (A) The failure to file monthly operating reports – 11 U.S.C. § 1112(b)(4)(H) – failure timely to provide information reasonably requested by the United States Trustee. Monthly reports are the “lifeblood” of a chapter 11 case. Given the amount of money received from the sale, it is important that the monthly reports be filed timely.
- (B) The failure to pay United States Trustee fees – 11 U.S.C. § 1112(b)(4)(K) – failure to pay any fees required under section 123 of title 28.

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<sup>1</sup> On June 21, 2021, the United States Trustee Program’s rule entitled *Uniform Periodic Reports in Cases Filed Under Chapter 11 of Title 11*, published at 28 C.F.R. § 58.8 (the “Final Rule”) became effective. The Final Rule requires that chapter 11 debtors-in-possession and trustees, other than in small business and subchapter V cases, file monthly operating reports and post-confirmation reports using streamlined, data-embedded, uniform forms in every judicial district where the U.S. Trustee Program operates.

The United States Trustee Program has posted on its website updated versions of the UST Form 11-MOR, Monthly Operating Reports (“MOR”) and UST Form 11-PCR, Post-confirmation Reports (“PCR”), that should be used for all reports filed after **November 30, 2021**.

The Acting United States Trustee cannot find and specifically identify any unusual circumstances establishing that dismissing this case is not in best interests of the creditors and the estate.

Pursuant to Local Bankruptcy Rule 9013-1(N), the Acting United States Trustee requests that the notice period for a hearing on this motion be shortened.

Wherefore, the Acting United States Trustee for Region 4 moves the Court to dismiss or convert this case whichever is in the best interests of the creditors and the estate, and to shorten the time period for a hearing on this matter.

John P. Fitzgerald, III  
Acting United States Trustee  
For Region 4

/s/ Jack Frankel  
Jack Frankel, Attorney, VSB # 15019  
1725 Duke Street, Suite 650  
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**Certificate of Service**

I hereby certify that on the 10<sup>th</sup> day of March, 2022, I mailed, United States mail, first class, postage prepaid, a true copy of this motion to the Debtor and e-mailed a copy to Debtor's attorney,

Linda M Armellino Michael J. Armellino 5811 Hampton Forest Way Fairfax, VA 22030	Richard G. Hall, Esq. Email: <a href="mailto:richard.hall33@verizon.net">richard.hall33@verizon.net</a>
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/s/ Jack Frankel